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No. 88-1515

IN THE
Supreme Court of the United States

OCTOBER TERM, 1988

UNITED STATES OF AMERICA, ACTING THROUGH THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PETITIONER

v.

RAINIER VIEW ASSOCIATES, A WASHINGTON LIMITED PARTNERSHIP, KURTIS R. MAYER AND PAMELA MAYER, D/B/A/ MAYER BUILT HOMES, RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

HUD's statement of the question is argumentative and misleading. It is argumentative because it states as true the unfounded assumption that formula rent adjustments are only "presumptive." It is misleading because it implies that the Ninth Circuit prohibited HUD from implementing the overall limitation, which requires HUD to avoid adjustments that result in material differences between Section 8 rents and market rents.

The statute required HUD to select a rent adjustment method that provides annual inflation/deflation adjustments. By contract HUD elected a formula method, reserving the right to select and adjust the applicable factors based on the overall limitation. Seven years later HUD began selectively *cutting* existing rents using a *project by project* market survey method. HUD claims that the overall limitation gives HUD the right to substitute a project by project method for the formula method elected in the contract.

As recognized by the Ninth Circuit, the true question is as follows:

> Does the overall limitation limit and qualify HUD's selection of the factors under the formula method elected by HUD in the contract, or is it the source of an *independent* project by project rent adjustment method?

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RESPONDENTS' BRIEF IN OPPOSITION

The Respondents respectfully request that this Court deny HUD's petition for writ of certiorari.

OPINIONS BELOW

Early in this case, the Respondents moved the District Court for summary judgment on the merits. Without oral argument, and without prior notice to Respondents, the District Court on its own granted summary judgment to HUD. On appeal, by *per curiam* opinion, the Ninth Circuit reversed the District Court and directed that summary

judgment be entered in favor of Respondents. On HUD's motion for an *en banc* rehearing, not one of the 26 Judges of the Ninth Circuit requested a vote.

STATUTORY PROVISIONS INVOLVED

HUD correctly cites the provision of the 1974 Housing Act which is involved. HUD's reference to the 1988 amendment to the statute is confusing. The amendment is not retroactive. It is also irrelevant, except to argue that a hostile Congress has somehow blessed HUD's acknowledged mishandling of rent adjustments.

STATEMENT OF THE CASE

HUD's latest description of the Section 8 program is an exercise in revisionist history. The *undisputed* record in this case is largely misrepresented or ignored. Some statements are flat-out wrong, and others are unsupported by the record. Instead of listing each misstatement, what follows is a balanced summary of the Section 8 program as established by the record.[1]

1. The Section 8 program was designed to provide specialized housing for the elderly, handicapped, and poor in specific "non-market" locations selected by HUD. HUD's rules and regulations increased operating costs and construction costs by over 50% . As a result, the rent levels subsidized by HUD had to be and were substantially higher than so-called market rents in order to induce the developers to construct the housing.

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[1] Respondents' opening and reply briefs contain the citations to the record. Sworn affidavits and deposition testimony were not contradicted by HUD.

2. The Section 8 program was designed to avoid the defects of the disastrous Section 236 low income housing program. Under the Section 236 program, low interest financing was provided by the government and the developer's profit was limited. Rent adjustments were made on an individual project by project basis according to operating costs. The project by project rent adjustment system was an administrative nightmare. It was expensive to process and time consuming to both HUD and the developer. The system often worked on a selective and arbitrary basis according to the HUD employee administering the adjustment. Rejected and delayed rent adjustments resulted in deferred maintenance, cuts in services, vacancies, and defaulted mortgages. Since the mortgages were government insured, the developers simply walked away from the projects, leaving HUD to foreclose.

3. The Section 8 program was designed to attract developers who would use private sector financing; thereby shifting the risk from the government to the developers and lenders. As a trade-off for the additional risk, the developers' profit would not be limited and the rent subsidies would be adjusted annually for inflation. Congress authorized and HUD elected an "automatic" inflation/deflation formula rent adjustment method to be applied uniformly to projects within the same geographical area. Automatic Annual Adjustment Factors and the geographical areas would be *determined* and *published* by HUD in the Federal Register on an annual basis, *with interim revisions permitted.* The factors would be a percentage figure to be applied against current rents to produce the new rents. For example, if the inflation factor is 5% and the current rents on an anniversary date are $350 per month, the adjusted rents for the following year would be 105% of $350, or $367 per month. Factors would be positive (increasing current rents) or negative (decreasing current rents). Separate factors would be selected and published by HUD based on the geographical area, the number of

bedrooms, and the rent range. Each Section 8 project with the same number of bedrooms and rent ranges in the same geographical area would receive the same percentage adjustment.

4. Developers and lenders relied on the factor adjustment method in building housing and lending money under the Section 8 program. The owners and lenders would not have risked participation if a project-by-project rent adjustment method was used.

5. The Section 8 statute required HUD to avoid rent adjustments that result in material differences between Section 8 rents and market rents ("overall limitation"). The contract provided that the overall limitation could not be used to decrease the initial difference between Section 8 rent and market rents. In other words, the overall limitation requires accurate inflation rent adjustments that maintain, without increasing or decreasing, the initial relationship between Section 8 rents and the market. During the first seven years of the program, HUD implemented the overall limitation by using market surveys to revise and fine tune the published factors and narrow the geographical areas.

6. In 1981, HUD suddenly began using individual project-by-project "comparability studies" to drastically cut Section 8 rents without regard to its own published factors.[2] HUD justified the new system by reinterpreting the overall limitation as the source of an alternative project-by-project rent

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[2] HUD began its attempt to undo the initial relationship to the market by telling owners their rents would be cut based on a "comparatibility study" between their individual project and other projects arbitrarily selected by HUD. It used untrained clerks to prepare the study without regulations, handbook provisions, or any other standards or guidelines. The District Court has ruled three times (as recently as December 24, 1987) in this litigation that HUD's individual comparability method produces arbitrary rent cuts in violation of due process. Footnote 6 of the Petition falsely states that "HUD has now adopted comprehensive nationwide standards and procedures." The only "standards and procedures" are the same ones in existence prior to the District Court rulings.

adjustment method wholly separate and apart from the factor adjustment method. In other words, HUD decided the tail should now wag the dog.

REASONS FOR DENYING THE PETITION

HUD's Petition for certiorari should be denied because the Ninth Circuit's decision was clearly correct. The Petition is a rehash of the same semantic arguments, misstatements, and false charges rejected by the entire Ninth Circuit.

The Section 8 program was very successful and ran smoothly from 1974 to 1981. The program attracted hundreds of developers and lenders despite their reluctance to get involved after the Section 236 fiasco. The initial rents were negotiated between HUD and the developer, and the developer received annual inflation adjustments based on the factors published by HUD. HUD kept rents in line by periodically monitoring the accuracy of the factors and making adjustments upward or downward for local market conditions.

In 1981, HUD completely changed the Section 8 rent adjustment system in an effort to unilaterally cut rent subsidies to the developers who relied upon the factor adjustment system provided by contract.[3] HUD's *pretext* for changing the system and cutting rents is the subject of this appeal.

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[3] With the same goal in mind, HUD adopted a regulation in 1983 imposing an operating cost method for Section 8 rent adjustments, claiming the right to do so under the Section 8 contract. The regulation was dropped after prompting the following remarks from Chairman Gonzales:

> "I recognize the Department is undoubtedly being directed to stick by its guns through the orders of the Office of Management and Budget. But it is a sorry day when any agency of the government, in the name of economy, stands ready to corrupt contracts, vitiate and violate the law, and generally operate in a style more appropriate to a small time dictatorship." *Section 8 Rent Adjustments, Elderly Housing and Other Assisted Housing Issues: Hearing Before the Subcommittee on Housing and Community Development of the House Committee on Banking, Finance and Urban Affairs*, 98th Congress 2d Sess. (1984).

The essence of HUD's position is that a project by project rent adjustment system is necessary to comply with the overall limitation and avoid inaccurate inflation adjustments. HUD's attorney states that HUD "was doing nothing" (Petition, page 7) to comply with the overall limitation before 1981 because the factors were based solely on geographically broad-based CPI figures, and not local market conditions. In other words, HUD is saying that from 1974 to 1981 it forgot about the overall limitation and did nothing but rubber stamp the CPI, resulting in "windfall profits" to the developers.

As the Ninth Circuit recognized, HUD is flatly contradicted by its own regulations, handbook, and memoranda, which have from the inception of the program provided for fine tuning and adjusting the factors and *geographical areas* based on local market conditions. HUD tries to explain away the regulation (24 C.F.R. Section 888.204) by saying it only deals with factor revisions where local market conditions indicate the factor is too low.[4] HUD tries to explain away the 1978 Handbook,[5] which does call for a factor adjustment if the factor is too high, by making the preposterous statement that the handbook was "never actually implemented" and "no AAAF was ever revised downward" from the CPI.

Prior to 1981, HUD's methodology[6] for determining the factors was described as follows:

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[4] HUD claims the regulation is consistent with its interpretation because project by project adjustments are only used when the factors are too high. This one-way street approach is typical of HUD. The owner is stuck with trying to convince HUD to revise the factor if the factor is too low, but HUD is free to ignore the factor and use an individual comparability study if HUD says the factor is too high. The remedy in both cases must be consistent — a factor adjustment.

[5] The Handbook provided as follows:

> Pursuant to [*the overall limitation*], the AMA branch or the PHA shall review the accuracy of the rent adjustments *to insure that it is comparable (neither too high nor too low) in relation to similar assisted or unassisted units*. If the adjustment is not comparable, the AMA branch *shall revise the factors* in accordance with the revision procedures....

[6] See Methodology, effective November 8, 1980, Appendix A, p.1a.

> Normally, these inflation factors are based on changes in the CPI rent and utility indexes for the most recent 12 month period, but they may, *for selected areas,* be based on changes in the CPI indexes for other time periods or be adjusted to reflect *rental market information derived from any other data sources or market analysis.*

In 1980, HUD counsel gave the following opinion:

> The handbook should include a system for field offices to check on whether the factors are resulting in correct rent adjustments. This could include requiring field offices to conduct a random sampling every two or three years to assure that the factor is resulting in rents which are comparable. *Where the sample indicates problems with the factor, steps should be taken to establish a separate factor for a market area now included in one of the broad census region categories or to correct the factor for one of the SMSAs for which an individual factor is now published on a regular basis.* This or another system to assure that an owner is not being treated arbitrarily must be established if HUD is to preserve its ability to apply the overall limitation.

In 1981, HUD further refined the criteria for determining the factors.[7] As is readily apparent from glancing at the Methodologies, the process for determining the factors is a detailed and complicated "formula" in which the CPI is only one component, along with other indexes and a "market analysis." If a market analysis indicated the CPI is too high, the factor was obviously set at a lower level than the CPI. There can be no dispute that from the inception of the program, HUD has implemented the overall limitation in determining the factors.[8]

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[7] See Methodology effective November 8, 1981, Appendix B, p.4a.

[8] Even if it were true that HUD issued regulations, handbooks, and methodologies and then ignored them, it does not change the fact that HUD had every right to adjust the factors in accordance with the overall limitation. HUD is apparently saying that the owners should lose their contract rights because HUD ignored its own policies.

HUD complains that the geographical areas are "relatively wide" and that the factors cannot protect against "economic variations" within an area. Of course this ignores the fact that *HUD* selects the geographical areas. Since 1975, HUD has increased the number of geographical areas three-fold. If HUD's market analysis indicated an "economic variation" HUD simply created a separate geographical area.

It is clear that before HUD invented the individual comparability method, HUD kept rents in line by using market data to raise or lower the factors and narrow the geographical areas. Now HUD wants to argue that its new individual comparability method is indispensable to keeping rents in line. It does not and cannot explain how adjusting the factors and geographical areas according to market surveys can possibly fail to keep the rents in line. It does not offer any evidence and none exists which indicates the factors selected by HUD in fact failed to keep rents in line. HUD's bald statements about "wasteful subsidies" and "windfall profits" are pure demagoguery. There is not one shred of evidence in the record to suggest that Section 8 rents are out of line with market rents. The only "evidence" cited by HUD are the arbitrary comparability studies conducted in violation of due process (see Footnote 2). In other words, HUD wants to use the results of an unconstitutional practice as evidence that its own detailed process for determining the factors was inaccurate.

Ninth Circuit Opinion.[9]

The Ninth Circuit based its decision on the plain language of the statute and contract, and a practical understanding of

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[9] In Footnote 9 of the Petition, HUD says that the *en banc* Ninth Circuit ruled that it had jurisdiction because the case involved the statute "rather than the contract." This is not true. The Ninth Circuit held that the case rested "at bottom" on the statute and regulations, not that the contract was irrelevant. The statute, regulations, *and* contract were properly considered in the Ninth Circuit Opinion.

the Section 8 program and HUD's administration of the program during the years the developers agreed to participate. The Ninth Circuit simply held that HUD must continue to implement the overall limitation without making a mockery out of the rent adjustment method HUD wrote into the contracts. HUD's distortions of the record and semantic arguments failed to convince a single Judge that the *per curiam* panel decision should be reheard *en banc*.

The Statute and Contract.

Sections 8(c)(2)(A) and (C) of the Housing Act, 42 U.S.C. 1437(f)(c)(2) provided as follows:

> (2)(A) The assistance contract shall provide for adjustment annually or more frequently in the maximum monthly rents for units covered by the contract to reflect changes in the fair market rentals established in the housing area for similar types and sizes of dwelling units or, if the Secretary determines, on the basis of a reasonable formula.
>
> * * * * *
>
> (c) Adjustments in the maximum rents as hereinbefore provided shall not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by the Secretary.

Subsections b and d of paragraph 1.9 of the Section 8 contract provide as follows:

> *Automatic Annual Adjustments.*
>
> (1) Automatic Annual Adjustment Factors will be determined by the Government at least annually; interim revisions may be made as market conditions warrant. Such factors and the basis for their determination will be published in the Federal Register. These published Factors will be reduced appropriately by the Government where utilities are paid directly by the Families.

(2) On each anniversary date of the Contract, the Contract Rents shall be adjusted by applying the applicable Automatic Annual Adjustment Factor most recently published by the Government. Contract Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the adjusted Contract Rents be less than the Contract Rents on the effective date of the Contract.

* * * * *

Overall Limitation. Notwithstanding any other provision of this Contract, adjustments as provided in this section shall not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by the Government; provided that this limitation shall not be construed to prohibit differences in rents between assisted and comparable unassisted units to the extent that such differences may have existed with respect to the initial Contract Rents.

Respondents' position is simply stated. The *statute* gave HUD the power to base rent adjustments on changes in market rents in the housing area *or* a formula, as long as the *method selected* would not result in material differences between Section 8 rents and market rents. Under the *contract,* HUD elected a formula rent adjustment method based on the *automatic* annual adjustment factors. In compliance with the statute, HUD reserved in the contract the right to determine, monitor and adjust the factors to avoid material differences.

HUD claims the overall limitation in the contract permits it to use a project by project market survey method as an alternative to the factor method. In other words, HUD wants to have the same broad discretion under the contract as it had under the statute — to permit a market survey method *or* a formula method. The contract could have but was not

written to permit both methods. If it had been, the program would have been rejected by the private sector. HUD admits it elected the factor method in the contract, but claims to have reserved the right to use a project by project market survey instead. HUD's position is irreconcilable.

HUD emphasizes the overall limitation language stating that:

> "Notwithstanding any other provision of this contract, adjustments as provided in the section shall not result in material differences...

Respondents agree with HUD that those words are clear. They say that adjustments shall not result in material differences. Respondents also agree with HUD that the overall limitation does not say *how* HUD is to avoid improper adjustments. Respondents further agree with HUD that the *statute* left it to HUD to determine how to avoid improper adjustments. The point is that when HUD elected the factor method in the *contract,* it *did* determine how improper adjustments were to be avoided — by monitoring and adjusting the factors. HUD contracted in a manner consistent with and authorized by the statute. It elected the method in the contract and cannot change its mind seven years later and adopt a different method.

HUD points to no contract language whatsoever to support its claim that a market survey method is an alternative to the factor method. The contract provided for adjustments based only on the published factors. It says nothing about adjustments based on a market survey method or any other method. Plaintiffs interpret the overall limitation to *qualify* HUD's selection of the factors used in the formula adjustment *required* under the contract. HUD interprets the overall limitation language to *nullify* the factor adjustment in favor of a totally different rent adjustment method not mentioned in the contract.

As it did before the Ninth Circuit, HUD again strains the language of the contract and statute to argue for a "two-step process" beginning with a "general," "preliminary," "presumptive," "threshold" factor adjustment, with the individual market survey method as a "cap"[10] or "check" on the factor adjustment. HUD's argument is no easier to follow now than it was before. While at the same time it says factor adjustments and individual comparability under the two-step process are complementary, it also says that its project by project market survey method "overrides" the factor method. The Ninth Circuit recognized that HUD's two-step process is really nothing more than a one-step process which substitutes a project by project rent adjustment method for the formula rent adjustment method elected by HUD in the contract. HUD's project by project approach is contradicted by the statute, the contract, the legislative history, and HUD's original interpretation and administration of the Act.

HUD accuses the Ninth Circuit of confusing two different "market survey" methods.[11] It says this confusion led the Ninth Circuit to incorrectly conclude that HUD's market survey method would nullify the factor method. This is a *non sequitur*. If a market survey method, of whatever kind, is

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[10] It should be clearly understood that HUD is not using individual market surveys just to deny factor adjustments. HUD is using its unconstitutional market surveys to *cut rent levels* established by factor adjustments in prior years. For example, assume the owner received factor adjustments from 1974 to 1981, the current rent level was $350 per month, and the factor for 1981 was 5%. If HUD's individual market study says the rent should be $275, it does not merely deny the 5% adjustment, it *reduces* the rent from $350 to $275. This is exactly what happened to Respondent Kurtis R. Mayer.

[11] The Ninth Circuit was not confused. HUD's explanation of the "market survey option" is completely fabricated. Since that option was not selected, it has never been defined nor published. Fair market rents, to the extent used to determine initial rents, are detailed determinations of rent for specialized housing in precisely determined areas (see 24 CFR §888.103(d) for determination of "data base").

used *instead of* the factor method, the market survey method obviously has the effect of nullifying the factor method.[12]

HUD also says the factor adjustment method is not nullified because the factors are used if its individual market study produces a higher rent or no individual market study is performed at all.[13] Once again, HUD's argument does not follow. This appeal is not about owners who get their factor adjustments. It is about those who do not get their factor adjustments because HUD used a different method. *For them,* the factor method is certainly nullified.[14]

The system HUD invented in 1981 is nothing like a tax audit. The comparison is frivolous. A tax audit tells whether or not the taxpayer is following the law. The object is not to subject those who are selected to a different system of taxation. HUD does not explain where it gets the authority to individually audit and cut the rents produced by its own detailed formula. If HUD's market survey method were truly an auditing process to see if the formula was accurate, the results would be used to revise the formula, not replace it with an entirely different system.

HUD's only argument is and always has been that the overall limitation creates a project by project market survey method entirely independent and separate from the factor method. The Ninth Circuit recognized that a limitation on the

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[12] HUD gets caught up in its own semantics. In effect, HUD admits that the factor method is nullified by saying the individual comparability method "overrides" the factor method. "Override" and "nullify" are synonymous. *Webster's New World Dictionary Second College Edition* (1979).

[13] Without citing any evidence, HUD says that only 10% of the projects nationwide have been subjected to individual market studies. In its memoranda, however, HUD requires a separate study for *all* projects showing a profit. Elsewhere in the petition, HUD says comparability studies have been "enforced with a vengeance." The fact is that the comparability method has been and is used widely as an independent method of rent adjustment.

[14] As pointed out in Footnote 10, HUD's approach is also retroactive — it nullifies past as well as present factor adjustments.

factor method cannot be construed to nullify the factor method. The overall limitation limits, qualifies, and works with the factor method. It does not *replace* the factor method with a project-by-project approach similar to the discredited Section 236 program.

The Section 8 Program.

The Section 8 Program was the Ford administration's response to the need for housing for the poor and elderly. The object was to have the private sector build, finance, and operate the housing in return for a profit. The rent adjustment process selected by HUD to attract the private sector was simple and fair. HUD would annually determine the percentage increase in inflation in a geographical area selected by HUD, and the same increase would automatically be given to all projects in the area. Unlike the project by project approach under the Section 236 Program, the owners would not have to come in and argue with local HUD personnel every year over their adjustments.

HUD's Administration of the Section 8 Program.

HUD's statement that it has always had the same interpretation of the overall limitation is purely and simply a bald denial of reality, as shown by the undisputed record. For the first seven years, HUD interpreted and administered the Section 8 progran in exactly the same way mandated by the Ninth Circuit. HUD's regulations, handbook, and methodologies interpreted the overall limitation to require adjustment of the factors area-wide according to market surveys. In 1981, HUD revised its long-standing interpretation and completely changed its administration of the rent adjustment process. This lawsuit was filed in 1983 to challenge the new process. The long standing interpretation was obviously HUD's original interpretation, not the new interpretation that prompted the filing of this lawsuit.

The 1987 and 1988 Congress.

As HUD points out, Congress has been well aware of HUD's post-1981 administration of the Section 8 program. Congress has specifically noted HUD's track record of adopting strained and illogical interpretations to justify illegal and unprincipled attacks on the Section 8 program. HUD has left no stone unturned in its attempt to cut subsidies and kill the program. This case is only one of those attacks (See Footnote 3).

The 1987 House Committee Report[15] described HUD's post-1987 rent adjustment process as follows:

> When it enacted the Section 8 program, Congress intended that rents for project based assisted projects would be reduced only if the published Automatic Annual Adjustment Factor ("AAAF") was negative; reflecting a noticeable general down turn in rents in the market area. Although no negative adjustment factors have been published to date, HUD field offices have been making capricious individualized rent reductions nonetheless.

Faced with an agency gone wild, Congress changed the statute to help prevent HUD's abuses. HUD's hypocritical[16] attempt to claim support from the actions of a hostile Congress reminds one of the adage that "even the devil can quote scripture to his advantage." The *only* express reference to the original intent of Congress fully supports the Ninth Circuit and directly contradicts HUD's post-1981 practice:

> When it enacted the Section 8 program, Congress intended that rents for project based assisted projects would be reduced only if the published Automatic Annual Adjustment Factor ("AAAF") was negative...

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[15] See H.R. Rep. No. 122, 100th Cong., 1st Sess. (1987)

[16] As noted in the 1988 Hearings quoted in the text below, HUD refuses to follow the 1987 amendment at the same time it attempts to use the amendment as support.

HUD on the other hand claims that individual comparability can be used to cut rents without a negative factor. It is difficult to imagine a clearer and more direct refutation of HUD's position.

Congress was fed up with HUD's tactics and generally prohibited any rent cuts after April 15, 1987, even with a negative factor. In 1988, HUD again defied Congress by not recognizing the cutoff date of April 15, 1987 and claiming the right to cut rents with a negative factor. The 1988 Sub-committee Report[17] responded as follows:

> Nothing could be more convoluted and tortuous than HUD's interpretation of. . . the 1987 Act which resulted in a denial of the policy established by that law. HUD's interpretation rendered meaningless the April 15, 1987, date chosen by Congress to trigger the prohibition against certain Section 8 rent reductions.
>
> For certain project-based Section 8 assistance programs, the 1987 Act prohibited reduction in Section 8 rents in effect on or after April 15, 1987, unless a reduction in mortgage payments was the result of the project having been refinanced. The House Committee report on this provision explained that Congress believed that HUD never had the legal right to reduce Section 8 rents in the absence of a negative annual adjustment factor. However, HUD ignored the Committee's directive in the report and made capricious individualized rent reductions in the absence of such negative factor. It is the intent of Congress to take away HUD's right to make rent reductions absent of refinancing, regardless of whether or not there was a negative factor. . .

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[17] H.R. Rep. No. 100-741, 100th Cong. 2d Sess. (1978).

> Unfortunately, HUD has not seen fit to follow these provisions in the 1987 Act; instead it has made the prohibition on rent reductions effective from February 5, 1988, and not on April 15, 1987, as intended by Congress, and has indicated that it will reduce rents if there is a negative annual adjustment factor in contravention of the intent of Congress to only permit such reductions upon project refinancing. Section 602 of this Bill again makes our intent clear on these issues and directs HUD to pay to the owner the amount of lost rents that have occurred because of the illegal reductions made after April 15, 1987.

In summary, Congress and the Ninth Circuit are in complete agreement. HUD was violating original congressional intent by cutting rents without publishing a negative factor. Comparability or market surveys can be used to revise factors, and even to select a negative factor, but they cannot be used outside the automatic formula adjustment process that was guaranteed to the developers and lenders in the contract.

HUD ignores these points and tries to direct the focus to a relatively minor change requiring application of the automatic annual adjustment factor if a "comparability study" is not given to the project owner sixty days before the anniversary date of the contract. As stated by HUD, the amendment does assume that a "comparability study" can be used to limit the factors. The issue, however, is *how* they are used, which is not specifically addressed. To be consistent with the committee reports, the comparability study would be used to make an interim revision to the factor that would otherwise apply.

In any event, the issue is not what Congress did in 1987 or 1988[18] The issue is what Congress intended in 1974. The only

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[18] "The views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one." *Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102 (1980), n. 13.

express reference to original intent is in the 1987 and 1988 Committee Reports, both of which flatly contradict HUD's ratification argument.

The Public Interest.

HUD tries to posture this case as an attack on the treasury by greedy landlords. HUD refers to wasteful subsidies and windfall profits in an appea to passion rather than reason. As HUD well knows, there is no evidence whatsoever to suggest that Section 8 rents are out of line with market rents, except its own unconstitutional and invalid individual market studies. The affidavits filed in this case establish that HUD's rent cuts have put many projects in danger of foreclosure. That certainly cannot be in the public interest.

Saving money is commendable, but not at the expense of contractual rights and of the larger view of public interest. Some may view the recent refusal of a federal pay raise as commendable, but if as a result federal judges leave the bench in droves, that can hardly advance the public interest. Likewise, giving a pay raise to federal judges to keep up with the cost of living is hardly a "windfall," although HUD's attorneys would probably choose that characterization.

The fact is that if HUD kept its promises, the developers might be inclined to stay in the program instead of abandoning it when they have the opportunity, as is now the case. The depletion of our already small inventory of housing for the elderly, the handicappe, and the disadvantaged, cannot be in the public interest.

HUD's suggestion that low-income tenants will suffer a loss unless HUD can abrogate its contracts is an affront to common sense. As HUD knows, rent adjustments on whatever basis and whatever the result do not affect the tenant one way or the other. Section 8 tenants pay a fixed percentage of their income for rent, regardless of the amount of the rent. However, failure to give an owner a rent adjustment based on

the formula process does affect tenants. Owners are dropping out of the program because HUD has turned the adjustment process into a subjective and torturous exercise, similar to the discredited process formerly used under Section 236.

In a more positive vein, some of the public interests supported by the Ninth Circuit's decision are as follows:

1. The public interest was to have low income and elderly housing constructed by the private sector. No rational person would gave signed a Section 8 contract if HUD reserved the right to determine adjustments on the basis of project by project market studies conducted by local HUD personnel.

2. The public interest was to simplify the rent adjustment process. HUD's method is complex, time consuming, costly, and subjective. Developers knew the problems with the Section 236 program and would not have accepted it. HUD itself wanted a simplified process and for that reason elected a formula process.

3. Respondents built specialized housing, under specialized construction standards, at specialized locations, for a specialized market, at the request of HUD. Those factors alone resulted in housing that cost up to 50% more to build than so-called "market" housing. Much of it was built when interest rates exceeded 20%. Developers were encouraged to use private financing and take the risk, in return for profits, using a simplified rent adjustment process. HUD now wants to renege on its contract. It cannot be in the public interest to allow HUD to renege on its promises. Trust in government is already an endangered commodity.

CONCLUSION

The Ninth Circuit decision is obviously correct. The overall limitation limits HUD's methodology for determining the factors. It does not create an independent project by project rent adjustment method. HUD offers no legitimate grounds for reversing the Ninth Circuit decision, and the Petition should be denied. Alternatively, the Court should grant certiorari and summarily affirm the Ninth Circuit.

Respectfully submitted,

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APPENDIX A

Methodology Used to Develop Automatic Annual Adjustment Factors for the Section 8 Housing Assistance Payments Program Effective November 8, 1980

Section 8(c)(2)(A) of the United States Housing Act of 1937, as amended, specifies that an assistance contract made pursuant to Section 8 shall provide for adjustments annually or more frequently in the maximum monthly rents to reflect changes in the fair market rentals, and further specifies, if the Secretary determines, that these adjustments be made on the basis of a reasonable formula. Subpart B of Part 888 of the Code of Federal Regulations established general guidance in regard to the development and use of Automatic Annual Adjustment Factors (AAFs), the manner of publication, and the revision of factors for a particular area by HUD Field offices.

Pursuant to the regulations, the Headquarters Economic and Market Analysis Division produces Annual Adjustment Factors for selected (currently 34) Standard Metropolitan Statistical Areas (SMSAs) and the 4 Census Regions based on rent and utility inflation factors developed from the "Rent, residential" and "Fuel and Other Utilities" components of the Consumer Price Index for All Urban Consumers (CPI(U)). Normally, these inflation factors are based on changes in the CPI rent and utility indexes for the most recent 12 month period, but they may, for selected areas, be based on changes in the CPI indexes for other time periods or be adjusted to reflect rental market information derived from other data sources or market analysis.

A single factor is developed for use in adjusting Contract Rents (excluding utilities), and a matrix of 105 separate factors, reflecting differences for various rent ranges and bedroom sizes, is developed for adjustment of Contract Rents including all utilities (Gross Rents). The following is an example of the format used to publish the AAFs in the Federal Register:

SECTION 8 HOUSING ASSISTANCE PAYMENT PROGRAMS
ANNUAL ADJUSTMENT FACTORS
SMSA: ANAHEIM-SANTA ANA-GARDEN GROVE, CA

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+ BEDROOMS
UNDER $125	1.133	1.143	1.157	1.174	1.185
125-149	1.130	1.138	1.150	1.163	1.172
150-174	1.128	1.135	1.144	1.156	1.164
175-199	1.126	1.132	1.141	1.151	1.157
200-224	1.125	1.130	1.138	1.146	1.152
225-249	1.124	1.128	1.135	1.142	1.149
250-274	1.123	1.128	1.134	1.141	1.146
275-299	1.123	1.127	1.132	1.139	1.143
300-324	1.122	1.126	1.131	1.137	1.141
325-249	1.122	1.125	1.130	1.135	1.139
350-374	1.121	1.124	1.129	1.134	1.137
375-399	1.121	1.124	1.128	1.133	1.136
400-424	1.121	1.123	1.127	1.132	1.135
425-449	1.120	1.123	1.127	1.131	1.134
450-474	1.120	1.123	1.126	1.130	1.133
475-499	1.120	1.122	1.125	1.129	1.132
500-524	1.120	1.122	1.125	1.129	1.131
525-549	1.120	1.122	1.125	1.128	1.130
550-574	1.119	1.121	1.124	1.128	1.130
575-599	1.119	1.121	1.124	1.127	1.129
600 +	1.119	1.121	1.124	1.127	1.129

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT
(EXCLUDING UTILITIES) is 1.116

Development of AAFs for Contract Rents (excluding utilities)

With two exceptions, the AAFs for Contract Rents (excluding utilities) effective November 8, 1980 were developed on the basis of rent inflation factors derived from the residential rent component of the CPI for the 12-month period from April or May 1979 to April or May 1980, depending on the month designated for data collection in each market area.

The inflation factor applicable to the San Francisco SMSA was derived from the trend in the CPI rent index between August 1979 and April 1980, and the inflation factor for the Anchorage SMSA was derived from the CPI trend between January 1980 and May 1980. The use of the different time periods for calculation of the inflation factors for the San Francisco and Anchorage SMSAs was adopted to avoid questionable short-term fluctuations in the CPI rent indexes for those areas.

A table indicating the rent inflation factors applicable to the 4 Census Regions and the 34 SMSAs for which CPI data currently is available is attached.

The following example illustrates the development of the AAFs for Contract Rents (excluding utilities) for the Anaheim-Santa Ana-Garden Grove SMSA, which as indicated at the bottom of the preceding table of Annual Adjustment Factors has been established at 1.116:

$$\text{CPI rent index May 1980} \quad \frac{207.6}{186.0} = 1.116$$
$$\text{CPI rent index May 1979}$$

Development of AAFs for Contract Rents Including Utilities (Gross Rents)

As indicated, a matrix of 105 separate factors, reflecting differences for various rent ranges and bedroom sizes, is developed for adjustment of Gross Rents.

The AAFs for Gross Rents effective November 8, 1980 were developed on the basis of rent and utility inflation factors derived from the residential rent, and fuel and utilities components of the CPI. The rent inflation factors are the same as those used for the development of the AAFs for Contract Rents (excluding utilities). Estimates of utility costs by bedroom size established as part of the Fair Market Rent schedules for Section 8 Existing Housing in 1979, and two sets of utility inflation factors were used to develop the utility portion of the AAFs for Gross Rents.

The most recent annual utility inflation factors reflect changes in the fuel and utilities component of the CPI for the 12-month period from April or May 1979 to April or May 1980. The utility inflation

factors for the previous year generally reflect changes in the utilities component of the CPI between April or May of 1978 and 1979; but, for some areas, they may reflect changes for other time periods or adjustments based on other data or market analysis.

The estimates of utility costs by bedroom size for 1979, as determined from the Annual Housing Survey (AHS) national sample for 1977 updated to 1979 by use of the CPI national index for utilities, are as follows:

Number of Bedrooms	0	1	2	3	4
Fuel and Utility Costs	$20	31	47	66	79

A table indicating the rent and utility inflation factors applicable to the 4 Census Regions and 34 SMSAs is attached.

The following example illustrates the development of one of the 105 factors in the matrix of adjustment factors for Gross Rents applicable to the Anaheim-Santa Ana-Garden Grove SMSA (Monthly Gross Rent range of $225-249 and 2 Bedroom Unit):

The objective is to develop Annual Adjustment Factors reflecting differences for various rent ranges and bedroom sizes.

Step 1. Calculate the mid-point of the selected Gross Rent range (to be used to represent the Gross Rent for this rent range for 1980):

$$\frac{\$249.99 - 225.00}{2} = \$12.50 \qquad \$225.00 + 12.50 = \$237.50$$

Step 2. Update the utility cost for a 2 Bedroom Unit from 1979 to 1980 using the calculated utility inflation factor from the attached table:

$\$47.00 \times 1.1550 = \$54.29$ Utility component 1980

Step 3. Use the utility cost estimate for 1980 to calculate the rent component of the mid-point rent as of 1980:

$\$237.50 - 54.29 = \$183.21$ Rent component 1980

Step 4. Update the utility cost for a 2 Bedroom Unit from 1980 to 1981 using the appropriate utility inflation factor from the attached table:

$\$54.29 \times 1.2010 = \$65.20$ Utility component 1981

Step 5. Update the rent component of the mid-point rent from 1980 to 1981 using the rent inflation factor from the attached table:

$$\$183.21 \times 1.1160 = \$204.46 \text{ Rent component 1981}$$

Step 6. Add the rent and utility components calculated in steps 4 and 5 to obtain a mid-point rent for 1981:

$$\$65.20 + 204.46 = \$269.66 \text{ Mid-point rent 1981}$$

Step 7. Calculate the AAF for the 2 Bedroom Unit in the $225-249 rent range by dividing the mid-point rent for 1981 by the mid-point rent for 1980:

$$\frac{\$269.66}{237.50} = 1.135 \text{ AAF for Gross Rent}$$

Checking the table of AAFs for Gross Rents for the Anaheim-Santa Ana-Garden Grove SMSA reveals that the AAF for the 2 Bedroom Unit in the $225-249 rent range is given as 1.135 as illustrated in the above example.

Note: See attached table for Rent and Utility Inflation Factors.

RENT AND UTILITY INFLATION FACTORS
Used to Develop Automatic Annual Adjustment Factors
Effective November 8, 1980

SMSA CODE	CENSUS REGION OR SMSA	1980-1981 RENT FACTORS	1979-1980 UTILITY FACTORS	1980-1981* UTILITY FACTORS
——	NORTHEAST	1.0740	1.2247	1.2500
——	NORTH CENTRAL	1.0790	1.1425	1.1550
——	SOUTH	1.0920	1.1266	1.1430
——	WEST	1.1060	1.1243	1.2070
360	ANAHEIM-SANTA ANA-GARDEN GROVE	1.1160	1.1550	1.2010
380	ANCHORAGE	1.0030	1.0911	1.0900
520	ATLANTA	1.0720	1.0994	1.1160
720	BALTIMORE	1.0670	1.0583	1.1810
1120	BOSTON	1.0780	1.3229	1.2840
1280	BUFFALO	1.0540	1.1782	1.2420
1600	CHICAGO	1.0900	1.1328	1.1630
1640	CINCINNATI	1.1040	1.0860	1.1370
1680	CLEVELAND	1.0690	1.1789	1.1500
1920	DALLAS-FORT WORTH	1.0960	1.0560	1.0390
2080	DENVER-BOULDER	1.0970	1.1435	1.1630
2160	DETROIT	1.1000	1.1508	1.1340
2960	GARY-HAMMON-EAST CHICAGO	1.0900	1.1328	1.1630
3320	HONOLULU	1.1060	1.0398	1.1440
3360	HOUSTON	1.0600	1.2063	1.1530
3760	KANSAS CITY	1.0630	1.1529	1.0410
4480	LOS ANGELES-LONG BEACH	1.1160	1.1550	1.2010
5000	MIAMI	1.1220	1.0936	1.1480
5080	MILWAUKEE	1.0800	1.1857	1.2270
5120	MINNEAPOLIS-ST. PAUL	1.0960	1.0700	1.1260
5600	NEW YORK	1.0660	1.1997	1.2100
5640	NEWARK	1.0660	1.1997	1.2100
5745	NORTHEAST PENNSYLVANIA	1.0580	1.1704	1.1890
6000	OXNARD-SIMI VALLEY-VENTURA	1.1160	1.1550	1.2010
6040	PATTERSON-CLIFTON-PASSAIC	1.0660	1.1997	1.2100
6160	PHILADELPHIA	1.0610	1.2368	1.2830
6280	PITTSBURGH	1.0680	1.1110	1.1280
6440	PORTLAND	1.0730	1.2383	1.2940
6780	RIVERSIDE-SAN BERNARDINO	1.1160	1.1550	1.2010
7040	ST. LOUIS	1.1530	1.1204	1.0670
7320	SAN DIEGO	1.0900	1.1508	1.2700
7360	SAN FRANCISCO	1.0970	1.1275	1.1690
7600	SEATTLE-EVERETT	1.2070	1.2132	1.2840
8840	WASHINGTON	1.0860	1.1033	1.1460

* Dates indicated above for rent and utility factors apply to the period of use.
See the text of the AAF Methodology for references to data sources and dates.

APPENDIX B

Methodology Used to Develop Automatic Annual Adjustment Factors for the Section 8 Housing Assistance Payments Program Effective November 8, 1981

Section 8(c)(2)(A) of the United States Housing Act of 1937, as amended, specifies that an assistance contract made pursuant to Section 8 shall provide for adjustments annually or more frequently in the maximum monthly rents to reflect changes in the fair market rentals. This Section further specifies, if the Secretary determines, that these adjustments can be made on the basis of a reasonable formula. Subpart B of Part 888 of the Code of Federal Regulations establishes general guidance in regard to the development and use of Automatic Annual Adjustment Factors (AAFs), the manner of publication, and the revision of factors for a particular area by HUD Field Offices.

The methodology used by the Headquarters Economic and Market Analysis Division to develop the November 8, 1981 AAFs is based on a formula using the "Rent, residential" and "Fuel and Other Utilities" components of the Consumer Price Index for All Urban Consumers (CPI(U)) as of June 1981, and data from the 1978 and 1979 Annual Housing Surveys (AHS) updated to 1982. AAFs are developed for 37 Standard Metropolitan Statistical Areas (SMSAs) and the four Census Regions. Two sets of factors are developed; one for Contract Rents Including Highest Cost Utility, and one for Contract Rents Excluding Highest Cost Utility. A matrix of 50 separate factors, reflecting variations by rent ranges and bedroom sizes, is developed for each set of factors. The step-by-step procedures and the data used to develop the adjustments factors are as follows:

(1) Calculation of the increases in the Rent and Utilities components of the CPI for the most recent twelve-month period

(2) Calculation of a Shelter Rent increase factor by adjusting for the units in the CPI Rent Index that include heating costs

(3) Calculation of a single Gross Rent increase factor for each of the 37 SMSAs and the four Census Regions by weighting the Shelter Rent and Utility increases in accordance with National and Census Regional weights derived from 1979 AHS data

(4) Calculation of AAFs for Contract Rents Including Highest Cost Utilities (Gross Rents) that reflect differences for rent ranges and bedroom sizes developed from 1978 and 1979 AHS data

(5) Calculation of AAFs for Contract Rents Excluding Highest Cost Utilities (Shelter Rents) by development of shelter rents for 1982 and 1981, and comparison of the 1982 rents with the 1981 rents

A detailed description of the step-by-step procedures and the data used to develop the Automatic Annual Adjustment Factors for both Gross Rents and Shelter Rents is given in the following paragraphs:

An example of the AAF calculations for the Boston SMSA is given following the description of the Methodology.

(1) *Calculation of Rent and Utility Increase Factors Based on CPI*

Rent and Utility increase factors for the most recent twelve-month period were calculated by dividing the most recent Rent and Utility price index from the CPI by the index for the same month one year earlier as shown in Table A below:

Table A
Rent and Utility Increase Factors Based on Change in CPI

Census Region or SMSA	Survey Month	Rent Index 1980	Rent Index 1981	Increase Factor	Util. Index 1980	Util. Index 1981	Increase Factor
Northwest Census Region	June	117.1	126.3	1.0786	143.2	168.7	1.1781
North Central Census Region	June	119.4	127.7	1.0695	134.2	150.7	1.1230
South Census Region	June	122.4	132.0	1.0784	127.0	144.9	1.1409
West Census Region	June	125.9	138.7	1.1017	141.3	149.1	1.0552
Anaheim-Santa Ana-Garden Grove, CA	June	212.0	235.2	1.1094	233.9	250.9	1.0727
Anchorage, AK	May	157.8	165.9	1.0513	194.7	217.9	1.1192
Atlanta, GA	June	166.6	187.8	1.1273	259.9	276.9	1.0654
Baltimore, MD	May	172.9	187.7	1.0856	266.4	309.1	1.1603
Boston, MA	May	194.4	218.7	1.1250	312.8	380.7	1.2171
Buffalo, NY	June	176.7	184.7	1.0453	346.4	408.6	1.1796
Chicago, IL	June	172.3	183.8	1.0667	253.8	285.0	1.1229
Cincinnati, OH-KY-IN	May	168.9	184.9	1.0947	287.5	318.9	1.1092
Cleveland, OH	June	169.1	178.3	1.0544	279.4	321.5	1.1507
Dallas-Fort Worth, TX	June	188.8	207.9	1.1012	243.6	305.9	1.2557
Denver-Boulder, CO	May	182.9	201.2	1.1001	243.0	276.7	1.1387
Detroit, MI	June	194.3	204.7	1.0535	294.9	335.6	1.1380
Gary-Hammond-East Chicago, IN	June	172.3	183.8	1.0667	253.8	285.0	1.1229
Honolulu, HI	June	205.6	229.1	1.1143	237.6	334.9	1.4095
Houston, TX	June	181.2	196.7	1.0855	317.2	377.2	1.1892
Jersey City, NJ	June	200.7	216.0	1.0762	316.5	375.3	1.1858
Kansas City, MO-KS	June	162.4	172.2	1.0603	265.3	299.0	1.1270
Los Angeles-Long Beach, CA	June	212.0	235.2	1.1094	233.9	250.9	1.0727
Miami, FL	May	121.9	141.6	1.1616	119.8	142.9	1.1928
Milwaukee, WI	May	178.4	193.3	1.0835	293.1	339.1	1.1569
Minneapolis-St. Paul, MN-WI	June	195.2	215.0	1.1014	266.9	320.3	1.2001
Nassau-Suffolk, NY	June	200.7	216.0	1.0762	316.5	375.3	1.1858
New Brunswick-Perth Amboy-Sayreville, NJ	June	200.7	216.0	1.0762	316.5	375.3	1.1858
New York, NY	June	200.7	216.0	1.0762	316.5	375.3	1.1858
Newark, NJ	June	200.7	216.0	1.0762	316.5	375.3	1.1858
Northeast Pennsylvania, PA	May	217.7	227.4	1.0446	348.0	412.7	1.1859
Oxnard-Simi Valley-Ventura, CA	June	212.0	235.2	1.1094	233.9	250.9	1.0727
Patterson-Clifton-Passaic, NJ	June	200.7	216.0	1.0762	316.5	375.3	1.1858
Philadelphia, PA-NJ	June	194.1	208.4	1.0737	292.3	345.0	1.1803
Pittsburgh, PA	June	185.9	199.4	1.0726	247.4	272.8	1.1027
Portland, OR-WA	May	200.3	215.7	1.0769	317.3	357.6	1.1270
Riverside-San Bernardino-Ontario, CA	June	212.0	235.2	1.1094	233.9	250.9	1.0727
St. Louis, MO-IL	May	166.1	177.6	1.0692	228.4	245.4	1.0744
San Diego, CA	May	221.2	243.4	1.1004	220.4	259.8	1.1788
San Francisco-Oakland, CA	June	212.8	233.2	1.0959	321.0	309.9	1.0000
Seattle-Everett, WA	May	225.3	240.7	1.0684	264.5	298.0	1.1267
Washington, DC-MD-VA	May	194.7	213.4	1.0960	252.5	287.6	1.1390

(2) *Calculation of a Shelter Rent Increase Factor*

(a) The residential rent component of the CPI is based on a sample of about 18,000 rental units. The rental data for some of the units in each of the areas surveyed includes the cost of heating. To calculate a Shelter Rent increase factor for each of the 37 SMSAs and the four Census Regions for which the CPI data was available, it was necessary to eliminate the cost of heating from the Rent component of the CPI, and this was accomplished by the use of the following formula:

$I = A(CR + DU) + B(R)$
(Solve for R to find Shelter Rent increase)

I = CPI residential rent increase factor

A = Percentage of rental units in the CPI sample that included the cost of heating

B = Percentage of rental units in the CPI sample that did not include the cost of heating

C = The ratio of Shelter Rent to Gross Rent

D = The ratio of Utilities to Gross Rent

R = Shelter Rent increase factor

U = CPI Utility increase factor

(b) The ratio of Shelter Rent and the ratio of Utilities to Gross Rent used in the above formula were derived from 1979 AHS data. The weight given to Shelter Rent was 70 percent, and the weight given to Utilities was 30 percent for all SMSAs, the North Central, South, and West Census Regions. The weights were 67 percent and 33 percent for the Northeast Census Region. The percentage of units in the CPI rental survey that included the cost of heating, and the Shelter Rent increase factors calculated by use of the preceding formula are shown in Table B below.

(3) *Calculation of a Gross Rent Increase Factor*

(a) A single Gross Rent increase factor for each of the 37 SMSAs and the four Census Regions was calculated by weighting the percentage increase in Shelter Rent and the percentage increase in Utilities in accordance with the weights derived from the 1979 AHS as given in paragraph (2)(b) above. The formula used for the calculation was as follows:

$G = A(R) + B(U)$
(Solve for G to find Gross Rent increase)

G = Gross Rent increase factor

A = Weight applicable to Shelter Rent

B = Weight applicable to Utilities

R = Percentage increase in Shelter Rent

U = Percentage increase in Utilities

(b) The Gross Rent factors are shown in Table B below.

Table B

Percentage of rental units in the CPI rental survey that included the cost of heating, calculated Shelter Rent increase factor, and calculated Gross Rent increase factor for four Census Regions and 37 designated SMSAs

Census Region or SMSA	Percent of Units With Heat	Shelter Rent Factor	Gross Rent Factor
Northwest Census Region	44.5	1.061	.0999
North Central Census Region	38.1	1.063	.0807
South Census Region	20.9	1.074	.0943
West Census Region	21.6	1.105	.0900
Anaheim-Santa Ana-Garden Grove, CA	12.5	1.111	.0994
Anchorage, AK	58.1	1.037	.0616
Atlanta, GA	17.7	1.131	.1111
Baltimore, MD	34.9	1.077	.1019
Boston, MA	46.9	1.110	.1421
Buffalo, NY	22.2	1.036	.0789
Chicago, IL	51.7	1.056	.0610
Cincinnati, OH-KY-IN	52.7	1.092	.0971
Cleveland, OH	36.6	1.043	.0750
Dallas-Fort Worth, TX	36.7	1.082	.1341
Denver-Boulder, CO	35.7	1.087	.1026
Detroit, MI	42.3	1.041	.0702
Gary-Hammond-East Chicago, IN	51.7	1.056	.0763
Honolulu, HI	00.0	1.000	.1229
Houston, TX	41.8	1.071	.1063
Jersey City, NJ	64.3	1.050	.0908
Kansas City, MO-KS	25.6	1.055	.0764
Los Angeles-Long Beach, CA	12.5	1.111	.0994
Miami, FL	2.3	1.161	.1708
Milwaukee, WI	35.0	1.075	.0995
Minneapolis-St. Paul, MN-WI	34.7	1.090	.1230
Nassau-Suffolk, NY	64.3	1.050	.0908
New Brunswick-Perth Amboy-Sayreville, NJ	64.3	1.050	.0908
New York, NY	64.3	1.050	.0908
Newark, NJ	64.3	1.050	.0908
Northeast Pennsylvania, PA	26.5	1.032	.0785
Oxnard-Simi Valley-Ventura, CA	12.5	1.111	.0994
Patterson-Clifton-Passaic, NJ	64.3	1.050	.0908
Philadelphia, PA-NJ	58.0	1.051	.0899
Pittsburgh, PA	39.4	1.069	.0788
Portland, OR-WA	14.3	1.075	.0904
Riverside-San Bernardino-Ontario, CA	12.5	1.111	.0994
St. Louis, MO-IL	21.0	1.069	.0705
San Diego, CA	6.8	1.099	.1228
San Francisco-Oakland, CA	8.6	1.098	.0689
Seattle-Everett, WA	12.3	1.066	.0843
Washington, DC-MD-VA	55.5	1.088	.1030

(4) *Calculation of AAFs for Contract Rents Including Highest Cost Utilities*

(a) The distribution of all rental units covered in the 1979 AHS national sample shows that the 1978 to 1979 median percentage increases in gross rents declines at subsequently higher rent intervals. The data also suggest that the percentage increase at each rent level rises as the number of bedrooms increases. The actual distribution of units and the rent increases taken directly from the AHS data are shown in Table C.

(b) Increases for all rent intervals and bedroom sizes could not be obtained directly from the AHS data because of the small number of cases in the survey sample. This was especially true in regard to the number of efficiency and four-bedroom units. Estimated distributions were made in these categories to develop a complete matrix covering all rent ranges and bedroom sizes. The complete matrix is shown in Table D.

(c) Intermediate adjustment factors necessary to complete a matrix of percentage rent increases based on the single Gross Rent factor and the variations shown for rent ranges and bedroom sizes were delivered by dividing the factors in Table D by 6.5 percent, which is the overall rent increase from the 1979 AHS sample of rental units matched in 1978 and 1979. The intermediate adjustment factors developed by this procedure are shown in Table E.

(d) The intermediate adjustment factors in Table E were updated to 1982 by increasing the 1978 rent levels by 33.3 percent, which was the median rent increase for the four-year period. The updated factors necessary to compute percentage rent increases in Gross Rents by rent range and bedroom size based on the single Gross Rent factor developed for the most recent twelve-month period are shown in Table F.

(e) The AAFs for Contract Rents Including Highest Cost Utility applicable to each Census Region and the 37 designated SMSAs were calculated by multiplying the single Gross Rent increase factor developed for each area in Step (3) by the intermediate adjustment factors shown in Table F, and adding 1 to the result.

Tables C, D, E, and F are shown following the description of Step (5) below:

(5) *Calculation of AAFs for Contract Rents Excluding Highest Cost Utilities*

(a) The AAFs for Contract Rents Excluding Highest Cost Utility were calculated by developing a 1982 shelter rent for each $50 rent interval, and then dividing the 1982 shelter rent by the mid-point of the rent interval, which represents the 1981 shelter rent to be adjusted.

(b) The 1982 shelter rents were developed in a series of steps by (1) calculating 1981 utility costs for each bedroom size unit, and then adding the utility cost to the mid-point of each rent interval to obtain 1981 gross rents, (2) calculating a 1982 gross rent by applying the appropriate AAF for gross rent, and (3) calculating 1982 utility costs, and then subtracting the utility cost from the gross rent.

(c) The 1981 utility costs were calculated by updating 1979 utility costs for each Census Region derived from the AHS. The 1979 costs were increased by 21 percent, which was the overall utility increase indicated by the CPI. 1982 utility costs were calculated by updating the 1981 costs by the utility increase factor for each Census Region and SMSA shown in Table A. The 1979 utility costs from the AHS that were used in the preceding calculations were as follows:

AREA	0-BR	1-BR	2-BR	3-BR	4-BR
Northeast Census Region	50	65	80	95	110
North Central Census Region	35	50	65	80	95
South Census Region	35	50	65	80	95
West Census Region	30	40	50	60	70

TABLE C

Median percentage change in Gross Rent from 1978 to 1979 and number of cases in sample, by rent range and bedrooms where number of cases exceeds 100 units.

Gross Rent in 1978	0 bedrooms		1 bedroom		2 bedrooms		3 bedrooms		4 bedrooms	
	%	Units	%	Unit	%	Unit	%	Unit	%	Unit
										1/
less than $100	12.5	100	12.2	302	12.1	260				
$100 to 149	8.0	138	7.9	751	10.2	766	8.9	201		
150 to 199	7.8	133	6.7	1,159	7.1	1,135	7.4	336		
200 to 249			7.0	927	6.4	1,326	4.8	400		
250 to 299			5.3	461	5.5	941	6.9	268		
300 to 349			4.8	134	5.0	459	5.3	232		
350 to 399					4.5	179	4.2	143		
400 to 449							4.9	111		
450 or more										

Note: Median percentage increase was 6.5 percent.

1/ Sample less than 100 units for each rent interval.

Source: 1978 and 1979 Annual Housing Survey, U.S. Summary (preliminary).

TABLE D

Estimated percentage change in gross rent from 1978 to 1979 by rent range and bedrooms based on Table C.

Gross Rent in 1978	0 bedrooms %	1 bedroom %	2 bedrooms %	3 bedrooms %	4 bedrooms %
less than $150	7.4	7.9	8.4	8.9	9.4
150 to 199	6.5	6.8	7.1	7.4	7.7
200 to 249	5.6	5.9	6.2	6.5	6.8
250 to 299	4.9	5.2	5.5	5.8	6.0
300 to 349	4.3	4.6	4.9	5.2	5.5
350 to 399	3.8	4.1	4.4	4.7	5.0
400 to 449	3.4	3.7	4.0	4.3	4.6
450 or more	3.1	3.4	3.7	4.0	4.3

Source: Estimated by EMAD, based on AHS.

TABLE E

Adjustment factors to be applied to median percentage increase in gross rent.

Gross Rent in 1978	0 bedrooms %	1 bedroom %	2 bedrooms %	3 bedrooms %	4 bedrooms %
less than $150	1.1385	1.2154	1.2923	1.3692	1.4462
150 to 199	1.0000	1.0462	1.0923	1.1385	1.1846
200 to 249	.8615	.9077	.9538	1.0000	1.0462
250 to 299	.7538	.8000	.8462	.8923	.9231
300 to 349	.6923	.7077	.7538	.8000	.8462
350 to 399	.5846	.6307	.6769	.7231	.7692
400 to 449	.5231	.5692	.6154	.6615	.7077
450 or more	.4769	.5231	.5692	.6154	.6615

Note: Factors developed from Table D for application to current CPI median gross rent percentage increase factor.

TABLE F

Adjustment factors updated to 1982 for application to percentage increase in gross rent developed for each Census Region and SMSA in Step (3) of AAF Methodology.

Gross Rent in 1982	0 bedrooms	1 bedroom	2 bedrooms	3 bedrooms	4 bedrooms
less than $200	1.1385	1.2154	1.2923	1.3692	1.4462
200 to 249	1.0346	1.0962	1.1577	1.2193	1.2808
250 to 299	.9306	.9770	1.0231	1.0693	1.1154
300 to 349	.8422	.8885	.9347	.9808	1.0193
350 to 399	.7538	.8000	.8462	.8923	.9231
400 to 449	.6962	.7423	.7885	.8346	.8693
450 to 499	.6385	.6846	.7308	.7769	.8154
500 to 549	.5808	.6269	.6731	.7192	.7616
550 to 599	.5231	.5692	.6154	.6615	.7077
600 or more	.4769	.5231	.5692	.6154	.6615

Note: The factors in Table F which reflect differences for rent ranges and bedroom sizes were applied to the single gross rent factor developed in Step (3) of the AAF Methodology to determine the AAFs for Contract Rents Including Highest Cost Utilities.

Example of Methodology Used for Calculation of AAFs as of Nov. 8, 1981 Boston, MA Standard Metropolitcan Statistical Area

(1) *Calculation of Rent and Utility Increase Factors Based on CPI*

$$\frac{\text{CPI Rent Index 1981}}{\text{CPI Rent Index 1980}} = \text{Rent Increase Factor } \frac{218.7}{194.4} = 1.1250$$

$$\frac{\text{CPI Utility Index 1981}}{\text{CPI Utility Index 1980}} = \text{Utility Increase Factor } \frac{380.7}{312.8} = 1.1271$$

(2) *Calculation of a Shelter Rent Increase Factor*

$I = A(CR + DU) + B(R)$ (See Methodology for identification of symbols)

$$R = \frac{I - ADU}{AC + B} \qquad R = \frac{1.125 - (.469)(.30)(1.2171)}{(.469)(.70) + .531} \qquad R = \frac{.9538}{.8593} \qquad R = 1.110$$

(3) *Calculations of a Gross Rent Increase Factor*

$G = A(R) + B(U)$ (See Methodology for identification of symbols)

$G = .70(.1100) + .30(.2171)$ $G = .0770 + .0651$ $G = .1421$

(4) *Calculation of AAFs for Contract Rents Including Highest Cost Utility*

Gross Rent Increase Factor developed in Step (3) above × Adjustment factor from Table F for each rent interval + 1 = AAF

$(.1421)(1.1385) + 1 = 1.162$ Calculated AAF for less than $200 rent interval

$(.1421(1.0346) + 1 = 1.147$ Calculated AAF for $200-249 rent interval

(Note: These examples are for the 0-Bedroom AAFs)

(5) *Calculation of AAFs for Contract Rents Excluding Highest Cost Utility*

1979 Utility Cost for 0-BR unit Northeast Census Region From AHS	$50
Increase in Utility Cost from 1979 to 1981 U.S. from CPI	×1.21
1981 Utility Cost for 0-BR unit	$61
Increase in Utility Cost from 1981 to 1981 Boston SMSA from CPI	×1.2171
1982 Utility Cost for 0-BR unit in Boston SMSA	$74
Mid-point of rent interval under $200 (1981 Shelter Rent)	$175
Plus 1981 Utility Cost	+ 61
1981 Gross Rent	$236
Multiply by AAF for Gross Rent at the $200-249 rent interval	×1.147
1982 Gross Rent	$271
Minus 1982 Utility Cost	− 74
1982 Shelter Rent	$197

$$\frac{\text{1982 Shelter Rent}}{\text{1981 Shelter Rent}} = \text{AAF for Contract Rents Excluding Highest Cost Utility (0-BR under \$200 interval)} \quad \frac{\$197}{\$175} = 1.126 \text{ AAF}$$

(Note: Approved AAF is 1.130 – difference is attributable to computer rounding)